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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

In re: NATIONAL SECURITY AGENCY TELECOMMUNICATIONS RECORDS LITIGATION	MDL Dkt. No. 06-1791-VRW **STIPULATION AND [~~PROPOSED~~] ORDER RE MOTION TO DISMISS IN *CLAYTON v. AT&T COMMUNICATIONS OF THE SOUTHWEST, INC., ET AL.***
This Document Relates To: *Clayton v. AT&T Communications of the Southwest, Inc., et al.*, No. 07-1187.	[Civil L.R. 6-1(a); 7-12] Courtroom: 6, 17th Floor Judge: Hon. Vaughn R. Walker

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RECITALS

A. The two Federal-State cases from Missouri, *Clayton v. AT&T Communications of the Southwest, Inc.*, No. 07-1187, and *United States v. Gaw*, No. 07-1242, both relate to the enforcement of subpoenas issued by Missouri Public Service Commissioners Robert Clayton and Steve Gaw. The same subpoenas are at issue in both cases. *Clayton* is unique in that it is the only Federal-State case in which a state brought an action against telecommunications carriers, specifically AT&T Communications of the Southwest, Inc.; SBC Long Distance, L.L.C.; SBC Advanced Solutions, Inc.; TCG St. Louis Holdings, Inc. dba TCG St. Louis; Southwestern Bell Telephone L.P.; and TCG Kansas City, Inc. ("Defendants").

B. While *Clayton* was still pending in the U.S. District Court for the Western District of Missouri, on August 28, 2006, Defendants filed a motion to dismiss in *Clayton*. On September 12, 2006, the Plaintiffs filed their opposition to the motion to dismiss.

C. Without hearing or opinion, the court denied the motion without prejudice through a docket text order dated January 31, 2007. *Clayton* Dkt. 69 (attached hereto as Exhibit A). The same text entry order also denied without prejudice a pending Motion To Change Venue, Or In The Alternative, To Stay and a pending motion regarding discovery. *Id.*

D. Soon thereafter, on February 15, 2007, the Judicial Panel on Multidistrict Litigation issued its order transferring *Clayton v. AT&T Communications of the Southwest, Inc.*, No. 07-1187; *United States v. Gaw*, No. 07-1242; *United States v. Rabner*, No. 07-1324; *United States v. Palermino*, No. 07-1326; *United States v. Volz*, No. 07-1396; and *United States v. Adams*, No. 07-1323 (the "Federal-State Cases").

E. On March 26, 2007, this Court entered a scheduling order for the Federal-State cases. MDL Dkt. 219 ("March 26 Order"). The parties understand that March 26 Order to specify the briefing presently required for the Federal-State cases. The Court's March 26 Order does not address any briefing by telecommunications carriers and, specifically, does not specify whether Defendants have any briefing obligations with respect to the motion to dismiss in *Clayton*. The March 26 Order does, however, list the docket number for *Clayton* (07-1187) in the caption.

F. The parties in *Clayton* are unsure whether the Court requires briefing in *Clayton* at this time and have met and conferred in good faith to propose the following schedule should the Court wish to receive briefing in *Clayton*. Accordingly, they jointly offer the following stipulation for the Court's consideration.

G. If the Court does not require briefing in *Clayton* at this time, the parties agree that any obligations of the Defendants to respond to the complaint in *Clayton* shall be suspended pending further order of this Court.

STIPULATION

If the Court does not require briefing in *Clayton* at this time, the parties in *Clayton* agree that any obligations of the Defendants to respond to the complaint in *Clayton* shall be suspended pending further order of this Court.

If the Court desires briefing on the *Clayton* motion to dismiss at this time, the parties in *Clayton* agree to the following schedule:

1. Defendants shall file a Motion to Dismiss the complaint in *Clayton*, updated to include the law of the Ninth Circuit, on April 9, 2007.

2. Plaintiffs shall file an opposition to the Motion, updated to include the law of the Ninth Circuit, on May 1, 2007.

3. Defendants may file a reply in support of the Motion, updated to include the law of the Ninth Circuit, on May 25, 2007.

4. The Motion shall thus be ready for hearing by June 14, 2007, the same day set for hearing the dispositive motions in the other Federal-State cases.

Dated: March 29, 2007.

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By /s/ *Marc H. Axelbaum*
Marc H. Axelbaum

Attorneys for Defendants

DECLARATION PURSUANT TO GENERAL ORDER 45, § X.B

I, MARC H. AXELBAUM, hereby declare pursuant to General Order 45, § X.B, that I have obtained the concurrence in the filing of this document from the other signatory listed below.

I declare under penalty of perjury that the foregoing declaration is true and correct.

Executed on March 29, 2007, at San Francisco, California.

/s/ *Marc H. Axelbaum*
Marc H. Axelbaum

Dated: March 29, 2007.

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By /s/ *Peggy A. Whipple per G.O. 45*
Peggy A. Whipple

Attorneys for the Missouri Public Service Commission

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~~[PROPOSED]~~ ORDER MODIFIED

Pursuant to the foregoing Stipulation, and good cause appearing, the Court orders the following:

~~A. Pending further order of this Court, Defendants need not respond to the complaint in *Clayton v. AT&T Communications of the Southwest, Inc.*, No. 07-1187.~~

~~- OR -~~

~~B.~~ Defendants in *Clayton* v. *AT&T Communications of the Southwest, Inc.*, No. 07-1187, shall file a Motion to Dismiss the complaint by April 9, 2007. Plaintiffs shall file an opposition to that Motion by May 1, 2007. Defendants may file a reply in support of their Motion by May 25, 2007. The Motion shall be heard on June 14, 2007, the same day set for hearing the dispositive motions in the other Federal-State cases.

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: March __, 2007.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IT IS SO ORDERED AS MODIFIED

Judge Vaughn R Walker

Hon
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